

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 24-CR-119

OMARION T. HARRIS,

Defendant.

RECOMMENDATION AND ORDER

Omarion T. Harris is charged with two counts of carjacking in violation of Title 18, United States Code, Sections 2119(1) and 2(a) and two counts of brandishing a firearm during a crime of violence, namely the carjacking, in violation of Title 18, United States Code, Sections 924(c)(1)(A)(ii) and 2(a). (ECF No. 1.) He has moved to dismiss the § 924(c) counts on the ground that carjacking is not a crime of violence. (ECF No. 14.)

This court recently recommended denial of a motion to dismiss presenting the same argument. *See United States v. Cortez*, 24-CR-48, ECF No. 44 (E.D. Wis., Aug. 5, 2024). In doing so, the court noted that the argument had been rejected by every circuit court to have considered it and also by Chief Judge Pamela Pepper, to whom both

Cortez and this matter are assigned. *Id.* (citing *United States v. Jackson*, 918 F.3d 467, 486 (6th Cir. 2019); *Estell v. United States*, 924 F.3d 1291, 1293 (8th Cir. 2019); *Ovalles v. United States*, 905 F.3d 1300, 1304, 27 Fla. L. Weekly Fed. C 1432 (11th Cir. 2018); *United States v. Cruz-Rivera*, 904 F.3d 63, 66 (1st Cir. 2018); *United States v. Gutierrez*, 876 F.3d 1254, 1257 (9th Cir. 2017); *United States v. Jones*, 854 F.3d 737, 740 (5th Cir. 2017); *United States v. Evans*, 848 F.3d 242, 247 (4th Cir. 2017); *Jordan v. United States*, No. 20-cv-935-pp, 2022 U.S. Dist. LEXIS 196396 (E.D. Wis. Oct. 28, 2022); *Ellis v. United States*, No. 19-cv-1155-pp, 2020 U.S. Dist. LEXIS 202645 (E.D. Wis. Oct. 30, 2020)).

This court's recommendation in *Cortez* is currently before Chief Judge Pepper. Although the defendant objected to this court's recommendation to Judge Pepper, the government opted not to respond to the objection, choosing to rely on its briefing before this court.

In light of these circumstances, the court finds no reason to wait for the government's response to Harris's motion. Rather, it is most efficient to expedite resolution so that this matter and *Cortez* may be considered by Chief Judge Pepper at the same time. Therefore, as the court stated in *Cortez*, for the reasons set forth in *Jordan*, 2022 U.S. Dist. LEXIS 196396, and *Ellis*, 2020 U.S. Dist. LEXIS 202645, the court recommends that the defendant's motion to dismiss be denied.

IT IS THEREFORE RECOMMENDED that the defendant's motions to dismiss (ECF No. 14) be **denied**.

IT IS FURTHER ORDERED that, in accordance with 28 U.S.C. § 636(b)(1)(B) and (C) and Fed. R. Crim. P. 59(b)(2), any written objection to any recommendation herein or part thereof shall be filed within fourteen days of service of this recommendation or prior to the Final Pretrial Conference, whichever is earlier. Failure to timely object waives a party's right to review.

Dated at Milwaukee, Wisconsin this 28th day of August, 2024.


WILLIAM E. DUFFIN
U.S. Magistrate Judge